

Further Background

Timeline of action

- February 27, 2018 South Carolina Governor Henry McMaster [requests a waiver of HHS regulations](#) which prohibit discrimination against qualified foster parents on the basis of religion, arguing that the regulation was improperly constructed.
- December 17, 2018 Texas Attorney General Ken Paxton [requests that HHS commence rulemaking to repeal 45 CFR 75.300\(c\)](#), which prohibits HHS contractors from discriminating against willing and qualified foster parents on the basis of age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation.
- January 23, 2019 HHS Principal Deputy Assistant Secretary Steven Wagner [notifies South Carolina that HHS is granting the state a waiver of prohibitions on religious discrimination in foster care](#).

The Waiver

- The waiver issued by HHS provides that Miracle Hill Ministries (“Miracle Hill”) and other similarly situated organizations in South Carolina are entitled to an exception from the federal foster care religious non-discrimination rules under the Religious Freedom Restoration Act (“RFRA”) and [45 CFR 75.102\(b\)](#), which allows for exceptions to HHS grantee rules for individual non-Federal entities.
- The waiver exempts South Carolina foster care subcontractors from [45 CFR 75.300\(c\)](#), which prohibits use of federal funds to discriminate against willing and qualified program participants (in this case, foster parents) solely on the basis of religion and sexual orientation.
- According to press accounts, Miracle Hill screens prospective foster care parents on the basis of religion and sexual orientation and turns away otherwise qualified foster parents who are [non-Protestant](#), [non-Christian](#), or [LGBTQ](#). The accounts also suggest that youth are sometimes coerced into participating in religious activities inconsistent with their own faith. The January waiver allows them to continue such practices using federal foster care funds, a departure from longstanding HHS policy and practice, as well as federal regulations.

Committee Jurisdiction

- The Subcommittee on Worker & Family Support has sole jurisdiction over Title IV-E of the Social Security Act, which focuses on providing safe, stable, and appropriate out-of-home care for foster children.

- The Subcommittee on Oversight has responsibility for determining whether the laws within the jurisdiction of the Committee on Ways and Means are being implemented and carried out efficiently and in accordance with Congressional intent.

Foster Parent Shortage

- Between 2016 and 2017, more than half of states experienced a decline in the number of available foster homes. A decline in available foster homes can be associated with a decline in foster parents, an increase in the number of children entering foster care, or both.
- [An independent study](#) conducted by the Chronicle of Social Change found that 25 states experienced decreases in their non-relative foster care capacity from 2012 to 2017, and that the states with the greatest decrease in foster care beds were Nebraska, Washington DC, South Carolina, Colorado, and Idaho.
- From 2012 to 2017, [South Carolina lost 16 percent of non-relative foster care bed capacity](#), while gaining more than 1,000 foster youth. Only 7 percent of foster youth statewide lived with relatives in 2008, and by 2015, 6 percent of foster youth lived with relatives.
- Nationally, [the total number of children in foster care has risen by more than 10 percent since 2013](#), in large part because of the opioid crisis. In South Carolina, the total number of children in foster care since 2013 has grown by 26 percent, more than twice the national increase.
- At the national level, growth in the number of children entering foster care each year stalled during FY2017. Yet [South Carolina was among the states where the number of children entering care continued to climb](#), increasing the number of children who needed foster homes.
- Nationally, there was a 5.9 percent increase in children entering foster care in FY2017, as compared to FY2013; [in South Carolina](#), the comparable increase was 25.4 percent.

LGBTQ Families and Foster Care

- [LGBTQ youth are over-represented in the child welfare system](#) for several reasons, not the least of which is that LGBTQ youth often become involved in the child welfare system because they experience discrimination or poor treatment at home related to their sexual orientation or gender identity.
- Meanwhile, [LGBTQ parents are under-represented among foster parents](#), even though research suggests that they may be more willing than other parents to accept children with special needs and are more likely to be people of color. Children of color are more likely to enter foster care and have a longer average duration in care.